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July 17, 1997

HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Notice of Ex Parte Presentation -- CC Docket No. 96-61

Dear Mr. Caton:

On July 17, 1997, Herbert E. Marks and James M. Fink, attorneys for the State of Hawaii, met with A. Richard Metzger, Jr. and Glenn T. Reynolds of the Common Carrier Bureau to discuss the above-captioned proceeding. In accordance with Section 1.1206(a) of the Commission's rules, two copies of the written presentation are being submitted for inclusion in the public record.

During the meeting, counsel for the State of Hawaii expressed its concern that many carriers have had recent ex parte commmunications with Commission staff seeking to carve out exceptions to the Commission's rate integration policy and Section 254(g). Counsel for the State of Hawaii reiterated positions taken in the State of Hawaii's previously filed pleadings that no exceptions are warranted under the clear mandate of Section 254(g) to integrate and geographically average rates nationwide so that all Americans have access to affordable interexchange telecommunications services.

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Please contact either of us if you have any questions.

Sincerely,

James M. Fink

Herbert E. Marks
James M. Fink

Enclosure

cc: A. Richard Metzger, Jr.
Glenn T. Reynolds

SUMMARY OF SUBMISSIONS OF THE STATE OF HAWAII

GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION ARE ESSENTIAL UNIVERSAL SERVICE SAFEGUARDS FOR CONSUMERS IN AREAS SUCH AS HAWAII

Many interexchange carriers have petitioned the Commission to reconsider its decision to faithfully implement Section 254(g)'s requirement that all interexchange services be geographically averaged and rate integrated. The Commission should reject these petitions because their proposals would violate the law and unreasonably discriminate against the people of Hawaii.

- **STATUTORY REQUIREMENT -- 47 U.S.C. § 254(g)**

  Congress enacted Section 254(g) in the Telecommunications Act of 1996 in order to codify the Commission's already-existing policies of geographic rate averaging and rate integration. These policies ensure that the citizens of areas such as Hawaii are not discriminated against and do not pay rates for interexchange telecommunications services that are higher than those paid by citizens residing in the continental United States ("CONUS").

  - **Geographic Rate Averaging** -- Section 254(g) of the Communications Act requires that all providers of interexchange services charge the same rates to subscribers in rural and high-cost areas that they charge in urban areas.

  - **Rate Integration** -- Section 254(g) requires that all providers of interexchange services charge the same rates to all of its subscribers in all states. This means that the same rate structure must be used for interexchange calls between points in the CONUS as that used for calls between CONUS and Hawaii points.

- **THE PLAIN LANGUAGE OF SECTION 254(g) APPLIES TO ALL INTEREXCHANGE CARRIERS AND ALL INTEREXCHANGE SERVICES**

  All interexchange services are subject to the geographic rate averaging and rate integration obligations of Section 254(g), regardless of the technology employed.

  - **Affiliates of Nationwide Carriers** -- In its First Report and Order in Docket 96-61, 11 FCC Rcd 9564 (Aug. 7, 1996) ("First Report and Order") (¶ 69), the Commission's expressly recognized that carriers could evade Section 254(g) and its implementing regulations if they were not required to integrate their rates across affiliates: "[N]othing in the record supports a finding that Congress

intended to allow providers of interexchange service to avoid rate integration by establishing or using their existing subsidiaries to provide service in limited areas."

In its recent ex parte letter to the Commission, GTE attempts to make much of the fact that Section 254(g)'s rate integration requirement applies to a "provider of interstate interexchange telecommunications services" and therefore, allegedly, individual operating companies cannot be treated collectively because each operating company is a separate "provider." The argument cannot bear the weight GTE piles on it. To give it credence would suggest that Congress intended to allow any telecommunications enterprise to balkanize its rate structures according to its own organizational desires -- an untenable proposition. It would clearly defeat the statutory regime were, for example, an interexchange carrier's holding company to own a separate operating company for each state and then to argue that each such operating company's rate integration obligations are different. Even if, arguendo, there is some validity to the argument advanced by GTE, it would not apply to GTE because GTE's affiliates are not truly separate. Indeed, just this past May, GTE announced that it had restructured its telephone operations to be more integrated, enabling its various affiliated providers (i.e., carriers) to share many corporate functions. In particular, GTE created an unregulated sales, service and marketing unit to offer an integrated package of local, long-distance, Internet and wireless services nationwide, regardless of GTE's traditional market boundaries. This new unit is responsible for coordinating and integrating all marketing, technology, finance, planning and business analysis, and regulatory work for GTE's telephone affiliates nationwide.

- **Satellite Services** -- In its First Report and Order (¶ 54), the Commission expressly ruled that the interexchange satellite services of American Mobile Satellite ("AMSC") are subject to Section 254(g).

- **Commercial Mobile Radio Services ("CMRS")** -- The same analysis used to include satellite services within the mandate of Section 254(g) applies to other interexchange wireless services such as CMRS. The Commission should therefore reject the attempt of the Cellular Telecommunications Industry Association ("CTIA") to exclude CMRS.

- **Small Carriers** -- In its First Report and Order (¶¶ 40, 53), the Commission expressly ruled that small carriers serving high-cost areas are subject to Section 254(g).

- **Both Originating and Terminating Services** -- In its First Report and Order (¶¶ 66, 72), the Commission ruled that Section 254(g) applies to both originating and terminating interexchange services:

> Congress made rate integration applicable to interexchange services provided to U.S. possessions and territories, including Guam, the Northern Marianas, and American Samoa. Further, rate integration applies to all interstate, interexchange telecommunications services as defined in the Communications Act. (¶ 66)

Furthermore, the Commission expressly rejected AT&T's request that the rate integration requirement be delayed for traffic terminating in Guam, the Northern Marianas, and American Samoa. The Commission noted that rate integration to Guam "is intended to benefit U.S. consumers," not just residents of Guam. (¶ 72) Rates for calls made to offshore points must be the same as rates for calls made from offshore points. Consumers in high-cost areas need to receive interexchange calls just as much as they need to initiate interexchange calls. If the Commission were to allow interexchange carriers to charge disproportionately higher rates for calls terminating on offshore points, consumers in these areas would receive far fewer calls than U.S. consumers residing at other locations of an equal distance away from the caller. U.S. consumers wishing to call these offshore points would also be discriminated against by being forced to pay disproportionately higher rates than those paid by callers wishing to call mainland locations of an equal distance. The Commission should, therefore, reject the recent opposition of IT&E filed in the context of rate integration plans for American Samoa and other offshore points which makes the unsubstantiated assertion that Section 254(g) applies only to originating interexchange services. The concept is to integrate all parts of the United States.

- **Nationwide Carriers Competing Against "Regional" Carriers --**

a) In its First Report and Order (¶¶ 38-39, 52), the Commission expressly ruled that forbearance from the geographic rate averaging and rate integration requirements was not warranted because it would harm the very people the statute was intended to protect (i.e., telephone subscribers living in high-cost and rural areas). The Commission stated:

> [W]e believe that establishing a broad exception to Section 254(g) for low-cost regions entails a substantial risk that many subscribers

in rural and high cost areas may be charged more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirements is unnecessary to ensure just and reasonable and nondiscriminatory charges for subscribers.

b) The Commission reiterated this principled position when it rejected AT&T's petition for waiver of Section 254(g). See 12 FCC Rcd 934 (Jan. 17, 1997).

c) The parade of evils alleged to result from low-cost regional competitors are unrealistic, given that the BOCs are offering nationwide interexchange services to the fullest extent permitted. Significant independent LECs, like GTE, also plan to offer interexchange services nationally and internationally.

- **Business Services** -- In its First Report and Order (¶ 9), the Commission expressly ruled that all business services are subject to Section 254(g). The Commission noted that the statutory definition of "interexchange service" "does not create any exception for nonresidential services."

- **Customer-Specific Offerings** -- Section 254(g) applies to customer specific offerings. In its First Report and Order (¶ 52), the Commission expressly did not exempt customer-specific offerings from Section 254(g)'s rate integration requirement: "We are not persuaded that we must forbear from requiring carriers to comply with rate integration, either generally or in competitive conditions." Thus, if the rate structure for the Mainland is postalized, the rate structure for Hawaii must be the same postalized structure. Forbearance from geographic averaging does not mean forbearance from rate integration.

- **Scope of Rulings** -- It is important to protect the integrity of Section 254(g)'s geographic rate averaging and rate integration policies and to deter any evasion or avoidance of Section 254(g). Accordingly, care should be taken in setting forth the standards for granting any degree of forbearance, or otherwise describing the policies. For example:

  a) Partial Forbearance Only. Even where there is forbearance from the geographic rate averaging requirement, it should be made clear that the carrier must still integrate its rates. Indeed, in the orders under reconsideration, the Commission did not forbear from rate integration.

b) AT&T's Historic Practices Irrelevant. AT&T's or any other carrier's historic practices are not determinative of when a given practice should be granted forbearance from the mandates of rate integration and geographic rate averaging. By enacting Section 254(g), Congress adopted rate averaging as its own policy for promoting universal service goals and Congress expressly stated that any exception to its policy should be "limited." See H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996). Section 254(g) clearly expands the scope of these policies beyond historic practices by applying them to all providers of interexchange services.

c) Rationale for Forbearance Inapplicable to Certain Discounted Offerings. In its First Report and Order (¶¶ 24-30), the Commission need not have forborne from applying geographic rate averaging to optional calling plans, contract tariffs, or Tariff 12 offerings. These offerings generally involve discounts from basic rate schedules. Where the basic rate schedules are averaged (as required by Section 254(g), these services will remain averaged after applying geographically nondiscriminatory discounts off of those schedules. Thus, there is no need for forbearance in these instances.

d) High-Cost Areas Expressly Included. The recent opposition of Sprint filed in the context of rate integration plans for Guam and the Northern Mariana Islands could not be more contrary to the clear direction from Congress in Section 254(g). Sprint would limit the application of rate integration and geographic rate averaging to locations where costs do not deviate to any significant extent from national averages. Such an argument shows a complete misunderstanding of the public policy behind Section 254(g). It is precisely those high-cost locations that do substantially deviate from national averages that Congress wanted Section 254(g) to cover. Rate averaging and integration is critical in such locations if customers are to be able to obtain interexchange services at affordable rates.

DETARIFFING OF INTEREXCHANGE SERVICES JEOPARDIZES ENFORCEMENT OF SECTION 254(g)'s RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

- The State of Hawaii supports the Petitions for Reconsideration Filed by: (1) the Rural Telephone Coalition; and (2) the Telecommunications Management Information Systems Coalition.

- The Commission's current information disclosure requirements are insufficient. The Commission requires carriers to make available "information" on rates and terms of service, but does not indicate what specific information carriers must actually disclose. All the Commission has said is that it does not intend to require carriers "to disclose more information than is currently provided in tariffs." Second Report and Order, 4 Comm. Reg. (P&F) 1199 (Oct. 31, 1996) at ¶ 84.

- **Same Information Should Be Required as Was Required Under Tariff** -- The Commission generally should require carriers to disclose the same amount of information about rates that is currently provided in tariffs. Such a requirement would not be burdensome because carriers have already been providing this amount of information to the Commission.

- **Provision of Information at Company Headquarters is Insufficient** -- For rate information to be accessible to consumers, the Commission should require that the rate information be made available at the following locations:

  - Internet Web Site

    Some carriers, such as AT&T and MCI, operate their own web sites. Those carriers that do not can easily post the information on another entity's site.

  - Location In Each State Where Interexchange Carrier Provides Service

    Customers will not travel to another state to peruse rate information. If the rate information is to be accessible and useful, it must be provided at convenient locations to the public.

- **Customer-Specific Offerings Should Not Be Exempted from the Rate Information Requirement.**

  The Commission should reject the petition for reconsideration filed by the Ad Hoc Telecommunications Users Committee which seeks an exemption for custom-specific offerings. Customers of specialized offerings are also entitled to some protection to assure compliance with the rate integration mandate.

  - The Commission did not forbear from applying Section 254(g) to customer-specific offerings. It only forbore from applying the geographic rate averaging requirement.

  - Without some public disclosure of rate and service information, customers of specialized offerings will be deprived of the notice necessary to determine whether carriers are possibly engaging in illegal discrimination.

  - Customers cannot know that initiating a complaint is warranted unless they have some access to a carrier's rate and service information initially.

  - Ad Hoc's professed concern with price collusion is unfounded. Under the tariff regime, the Commission expressly determined that requiring a carrier to file limited rate and service information would not promote price collusion. See Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880, 5902 (1991).

  - In that 1991 Order, the Commission did not require that the actual customer-specific contracts be filed. Rather, interexchange carriers were only required to file a tariff summarizing the contract.

  - The Commission concluded that the provision of this limited amount of information "avoid[s] disclosure of customer proprietary information or information that might increase the risk of tacit collusion in the marketplace."

SECTION 254(g)'s MANDATE FOR GEOGRAPHIC RATE AVERAGING IS NOT AFFECTED BY ANY REFORM OF ACCESS CHARGES

Deaveraged access rates paid by carriers have no bearing on Section 254(g)'s requirement that subscriber charges be geographically averaged. Geographic rate averaging, by definition, is intended to ensure uniform rates for geographical locations with disparate access cost structures.

- **The Subscriber Line Charge ("SLC")** -- The SLC is a rate charged directly to end-users (i.e., subscribers) for an interexchange service and thus cannot be deaveraged without violating Section 254(g).

- **Carrier's Carrier Access Charges (see 47 C.F.R. § 69.4(b))**-- If any access charges paid by carriers are deaveraged, such deaveraging would not, and should not, affect the obligation of interexchange carriers to offer geographically averaged rates to their subscribers.